Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term 1978

No. 78-1155

JOSEPH VITEK, Individually and as Director of the Department of Correctional Services; ROBERT PARRATT, Individually and as Warden of the Nebraska Penal Complex; JACK CLEAVENGER, Individually and as Director of the Department of Public Institutions; KLAUS HARTMANN, M. D., Individually and as Superintendent of the Lincoln Regional Center; BENJAMIN COATES, Individually and as head of the Security Building, Lincoln Regional Center,

Appellants,

vs.

CHARLES MILLER, WILLIAM GEORGE FOOTE, and LARRY D. JONES,

Appellees.

On Appeal from a Three-Judge Court of the United States District Court for the District of Nebraska

JURISDICTIONAL STATEMENT

PAUL L. DOUGLAS
Attorney General of Nebraska

MELVIN KENT KAMMERLOHR
Assistant Attorney General

2115 State Capitol
Lincoln, Nebraska 68509
Tel: (402) 471-2682

Attorneys for Appellants

COCKLE PRINTING CO., 2311 Douglas St., Omaha 68102

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JOSEPH VITEK, Individually and as Director of the Department of Correctional Services; ROBERT PARRATT, Individually and as Warden of the Nebraska Penal Complex; JACK CLEAVENGER, Individually and as Director of the Department of Public Institutions; KLAUS HARTMANN, M. D., Individually and as Superintendent of the Lincoln Regional Center; BENJAMIN COATES, Individually and as head of the Security Building, Lincoln Regional Center,

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On Appeal from a Three-Judge Court of the United States District Court for the District of Nebraska

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JURISDICTIONAL STATEMENT

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Appellants appeal from the judgment of a three-judge court of the United States District Court for the District of Nebraska entered on October 27, 1978, declaring a statute of the State of Nebraska to be unconstitutional and enjoining the State of Nebraska as hereinafter set forth.

—o—

OPINION BELOW

The judgment previously appealed from of the United States District Court for the District of Nebraska dated October 14, 1977, which is reported at 437 F. Supp. 569, a Memorandum of Decision and Order, both dated September 12, 1977, supporting said judgment, the judgment presently appealed from entered October 27, 1978 reaffirming the foregoing judgment and a Memorandum of Decision Regarding Mootness filed October 27, 1978, which are unreported, are all annexed hereto as Exhibits A-E, respectively.

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JURISDICTION

This is a civil rights action brought pursuant to 42 U.S.C. §1983, 28 U.S.C. §1343(3) and (4), and 28 U.S.C. §§2201 and 2202 declaratory relief that Section 83-180, Neb. Rev. Stat. 1943 (Reissue 1976) is unconstitutional under the Fourteenth Amendment to the Constitution of the United States and attendant injunctive relief.

A three-judge district court was convened below pursuant to 28 U.S.C. §2281, which was repealed by Public Law 94-381, Sec. 2, 90 Stat. 1119 but which repeal was not applicable to any action commenced on or before August 12, 1976. The present action was commenced on November 12, 1975.

On October 14, 1977, pursuant to a Memorandum of Decision and Order entered on September 12, 1977, the district court entered a final judgment which was sought to be reviewed herein.

Probable jurisdiction was noted by this Court on February 21, 1978 and oral argument was had in this Court on April 24, 1978.

On May 23, 1978 this Court vacated the judgment entered October 14, 1977 and remanded the case to the District Court for consideration of the question of mootness (*Vitek v. Miller*, 436 U. S. 407, 98 S. Ct. 2276, 56 L. Ed. 2d 381.)

On October 27, 1978 the District Court entered a Memorandum of Decision that the case was not moot and re-entered the same judgment as the one previously vacated. A Notice of Appeal therefrom was filed November 21, 1978 in the United States District Court for the District of Nebraska (App. Ex. F).

Jurisdiction to review by direct appeal the judgment of the United States District Court is conferred by 28 U.S.C. §1253.

Section 83-180, Neb. Rev. Stat. 1943 (Reissue 1976) found in Volume 5, page 1112 of the official edition of the Nebraska Revised Statutes, which the United States District Court found to be unconstitutional, provides as follows:

> "(1) When a physician designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical disease or defect, or when a physician or psychologist designated by the director finds that a person committed to the department suffers from a mental disease or defect, the chief executive officer may order such person to be segregated from other persons in the facility. If the physician or psychologist is of

the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his transfer for examination, study, and treatment to any medical-correctional facility, or to another institution in the Department of Public Institutions where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the department when, prior to the expiration of his sentence, treatment in such facility is no longer necessary.

"(2) When the physician or psychologist designated by the Director of Correctional Services finds that a person committed to the department suffers from a physical or mental disease or defect which in his opinion cannot be properly treated in any facility or institution in the Department of Public Institutions, the director may arrange for his transfer for treatment to a hospital or psychiatric facility outside the department. The director shall make appropriate arrangements with other public or private agencies for the transportation to, and for the care, custody and security of the person in, such hospital or psychiatric facility. While receiving treatment in such hospital or psychiatric facility, the person shall remain subject to the jurisdiction and custody of the Department of Correctional Services, and shall be returned to the department when, prior to the expiration of his sentence, such hospital or psychiatric treatment is no longer necessary.

"(3) When two psychiatrists designated by the Director of Correctional Services find that a person about to be released or discharged from any facility suffers from a mental disease or defect of such a nature that his release or discharge will endanger the public safety or the safety of the offender, the director shall transfer him to, or if he has already been transferred, permit him to remain in, a psychiatric

facility in the Department of Public Institutions and shall promptly commence proceedings applicable to the civil commitment and detention of persons suffering from such disease or defect."

A copy of the Notice of Appeal herein is set forth in the Appendix as Exhibit F.

QUESTIONS PRESENTED

1. Whether a constitutionally convicted felon who has been sentenced to the Nebraska Department of Correctional Services has any process due prior to his transfer from the penitentiary, to which he has been assigned within said department, to a mental hospital within the Department of Public Institutions of the State of Nebraska, when confinement in said hospital is within the sentence imposed upon him?

2. If process is due under question 1, what procedures are required by the Fourteenth Amendment of the United States Constitution in these circumstances?

STATEMENT OF THE CASE

Plaintiff-Intervenor, Larry D. Jones (appellee), was duly convicted of the crime of robbery under Nebraska law in the District Court of Douglas County, Nebraska, and was sentenced to the Department of Correctional Services for a term of three to nine years and com-

menced serving said term at the Nebraska Penal and Correctional Complex, a division of the Department of Correctional Services, on or about May 31, 1974 (R. 73). In April of 1975 said Larry D. Jones was involuntarily transferred to the Lincoln Regional Center Security Building, a facility of a state mental hospital operated by the Department of Public Institutions of the State of Nebraska. While in said mental hospital, the inmate remains subject to the jurisdiction and custody of the Department of Correctional Services.

The maximum sentence of appellee, Larry D. Jones, will not expire until May 30, 1983, subjecting him to the custody of the Department of Correctional Services until the expiration of said sentence. William George Foote and Charles Miller (appellees) have both received their final discharge after having served their maximum sentences and were no longer subject to the custody of the State of Nebraska prior to the entry of the Memorandum of Decision and judgment herein (Appendix Exs. A & B) and the case is moot as to them.

Said Larry D. Jones was transferred to the mental hospital, as above described, in accordance and compliance with the provisions of section 83-180, Neb. Rev. Stat. 1943 (Reissue 1976), set forth above. He subsequently intervened in the present case, alleging that the foregoing statute was unconstitutional on its face and as applied by defendants and that this transfer to the said mental hospital was not within procedural due process requirements. Most of the evidence was stipulated or otherwise uncontested.

On November 17, 1977 while this case was on appeal to the U. S. Supreme Court the first time, Larry D. Jones

was granted a limited parole to receive in-patient treatment at a V. A. hospital in Danville, Ill. In light of this the U. S. Supreme Court remanded the case to the U. S. District Court for consideration of the question of mootness. (*Vitek v. Miller,* 436 U. S. 407, 98 S. Ct. 2276, 56 L. Ed. 2d 381.) On October 27, 1978, the three judge district court found the case was not moot (Appendix A). Larry D. Jones is now back in the confines of the Nebraska Penal and Correctional Complex having been arrested in Arizona in November 1978, on a Parole Board Warrant issued October 4, 1978. His parole was revoked by the Nebraska Parole Board after a final hearing on January 8, 1979 (App. Ex. H).

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REASONS REQUIRING PLENARY CONSIDERATION

The conclusion by the court that process was due these prison inmates for transfer from one institution to another authorized by the sentence imposed appears to be contrary to the recent cases of this court of *Meachum v. Fano,* 427 U. S. 215, 49 L. Ed. 2d 451, 96 S. Ct. 2532, and *Montanye v. Haymes,* 427 U. S. 236, 49 L. Ed. 2d 466, 96 S. Ct. 2543. Briefly, the statutory system of the State of Nebraska for the custody of persons convicted of felonies provides, in addition to the statute above set forth, that: (1) The Director of the Department of Correctional Services shall designate the place of confinement of persons committed to the department (subject to the provisions of section 83-176—not applicable here) (83-173, Neb. Rev. Stat. 1943 (Reissue 1976), Appendix, Ex. G); (2)

whenever a person is sentenced or committed under any provision of law to a specific facility within the Department of Correctional Service or to the custody of the warden, he shall be deemed to be sentenced to the department. The Director of Correctional Services may designate as a place of confinement of a person committed to the department any available, suitable and appropriate institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another (83-176, Neb. Rev. Stat. 1943 (Reissue 1976), Appendix, Ex. G); (3) upon his initial admission to the facility each person committed to the department shall be given a thorough evaluation including physical, psychological, social, educational and vocational. A report shall be made including recommendations regarding the facility to which such person should be assigned and the program of treatment for his rehabilitation, including medical and psychological treatment (83-179, Neb. Rev. Stat. 1943 (Reissue 1976), Appendix, Ex. G).

This court has already recognized that transfer within the state system contemplated by the criminal sentence does not give rise to a procedural due process right—that was accomplished in the criminal conviction.

In *Montanye v. Haymes, supra,* this Court stated in part:

> "We also agree with the State of New York that under the law of that State Haymes had no right to remain at any particular prison facility and no justifiable expectation that he would not be transferred unless found guilty of misconduct. Under New York law, adult persons sentenced to imprisonment are not sentenced to particular institutions, but are committed

> to the custody of the Commissioner of Corrections. He receives adult, male felons at a maximum-security reception center for initial evaluation and then transfers them to specified institutions. NY Correct Law § 71(1) (Supp. 1975-1976); 7 NYCRR § 103.10. Thereafter, the Commissioner is empowered by statute to 'transfer inmates from one correctional facility to another.' NY Correc. Law § 23(1) (Supp. 1975-1976). . . . "

The same is true as to *Meachum v. Fano supra.*

In the present case the district court recognized that the Supreme Court held in those cases that there was no due process clause liberty interest in such transfers unless there was some right or justifiable expectation rooted in State law that the inmate would *not* be transferred. It then attempts to distinguish the present case by stating that:

> " . . . [T]here was an objective expectation, firmly fixed in state law and official Penal Complex practice, that a transfer would not occur except when the inmate suffers from mental disease or defect and that it cannot be adequately treated at the Penal Complex. . . . "

The foregoing quote by the district court is a misreading of section 83-180, Neb. Rev. Stat. 1943 (Reissue 1976), held by said court to be unconstitutional. That statute does not give the inmate an objective expectation that a transfer would not occur as stated by the district court above, but clearly gives him an expectation that he may be transferred if the physician or psychologist finds that he suffers from a mental disease or defect and is of the opinion that the person cannot be given proper treatment in the facility in which he is in. In the light of the

positive wording of this statute, together with the other state statutes mentioned above (Appendix, Ex. G), there is no objective expectation fixed in state law that a person, after classification, will remain in any one institution.

Neither is due process triggered as it was in *Morrissey v. Brewer,* 408 U.S. 471 (parole), *Gagnon v. Scarpelli,* 411 U.S. 778 (probation), or *Wolff v. McDonnell,* 418 U.S. 539 (good time), all of which were based upon the taking away of a positive grant affirmatively conferred by state law.

This Court further stated in *Montayne v. Haymes,* 427 U.S. 236 at 242:

> " . . . As long as the conditions or degree of confinement to which the prisoner is subjected are within the sentence imposed upon him and are not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight. . . . "

In the present case the district court put great reliance upon its findings that transfer to a mental hospital carried stigmatizing consequences, behavior modification, etc. amounting to a "grievous loss" citing *Wolff v. McDonnell and Morrissey v. Brewer, supra.* These considerations would seem to be irrelevant where the transfer is within the sentence imposed and not otherwise violative of the Constitution. (There was no challenge or finding that the conditions in the hospital or other areas within or without the Penal Complex where inmates may be transferred were violative of the Constitution.)

IF PROCESS IS DUE WHAT STEPS ARE REQUIRED?

The three-judge district court not only held that all of the requirements of *Morrissey v. Brewer, supra, Gagnon v. Scarpelli, supra,* and *Wolff v. McDonnell, supra,* must be followed but also added the requirement that legal counsel, furnished by the state, if the inmate is financially unable to furnish his own, must be made available. This, in spite of the fact that this Court considered but refused to make a requirement of legal counsel in all three of the above cases (Memorandum of Decision, App. pp. 12 and 13, Appendix, Ex. B).

OTHER SUBSTANTIAL CONSIDERATIONS

The three-judge court rendering the judgment in the present case consisted of two of the three district judges for the District of Nebraska and a judge from the United States Court of Appeals for the Eighth Circuit. If this judgment is permitted to stand, the officials of the Department of Correctional Services and the Department of Public Institutions will be constrained to follow its burdensome procedures, not only in every case of a transfer of a prison inmate to a mental hospital, but also in transfer of other inmates to facilities outside the Department of Corrections under the threat or fear of forfeiting their qualified immunity (thus encouraging actions for damages) for knowing failure to follow this precedent in the district.

Obviously, if they cannot transfer Larry D. Jones, appellee, while he is in custody, they cannot, without such procedure, transfer any other prison inmate for similar treatment or rehabilitation.

This Court has already pointed out the problems to a requirement of counsel, equally apropos here, in *Morrisey Scarpelli,* and *Wolff, supra.*

Respectfully submitted,

PAUL L. DOUGLAS
Attorney General of the State of Nebraska

MELVIN KENT KAMMERLOHR
Assistant Attorney General

Members of the Bar of the
Supreme Court of the United States

2115 State Capitol Building
Lincoln, Nebraska 68509
Tel: (402) 471-2682

Attorneys for Appellants

APPENDIX

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER,

Plaintiff,

and

WILLIAM GEORGE FOOTE, WILLIAM McKINLEY HINES, and LARRY D. JONES,

Plaintiffs-Intervenors,

vs.

JOSEPH VITEK, individually and as Director of the Department of Corrections; ROBERT PARRATT, individually and as Warden of the Nebraska Penal Complex; JACK CLEAVINGER, individually and as Director of the Department of Public Institutions; KLAUS HARTMANN, M. D., indivdually and as Superintendent of the Lincoln Regional Center; BENJAMIN COATES, individually and as head of the Security Building, Lincoln Regional Center,

Defendants.

(Filed October 14, 1977)

JUDGMENT

Dept. of Justice, September 13, 1977, State of Nebraska

Pursuant to the memorandum of decision of September 12, 1977, filing 57, and the proposals for release subsequently submitted by the parties,

IT HEREBY IS ADJUDGED AND DECREED:

1. That § 83-180 (1), Nebraska R. R. S. 1943, is declared to be unconstitutional as applied to the

plaintiffs in that it denied the plaintiffs due process of law;

2. That this lawsuit is moot as to the plaintiff Charles Miller and as to the plaintiff-intervenor William George Foote and the action is therefore dismissed as to them; and

3. That the defendants are enjoined from transferring the plaintiff-intervenor Larry D. Jones, at any time before his complete discharge from the custody of the State of Nebraska on the criminal sentence which he is now serving, from the Nebraska Penal and Correctional Complex to the Lincoln Regional Center, except by a procedure which includes each of the following:

A. Written notice to the prisoner that a transfer to a mental hospital is being considered;

B. A hearing, sufficiently after the notice to permit the prisoner to prepare, at which disclosure to the prisoner is made of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

C. An opportunity at the hearing to present testimony of witnesses by the defense and to confront and cross-examine witnesses called by the state, except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination;

D. An independent decisionmaker;

E. A written statement by the factfinder as to the evidence relied on and the reasons for transferring the inmate;

F. Availability of legal counsel, furnished by the state, if the inmate is financially unable to furnish his own; and

G. Effective and timely notice of all the foregoing rights.

Dated October 14, 1977.

By the Court:

/s/ Donald P. Lay
United States Circuit Judge

/s/ Warren K. Urbom
Chief United States District Judge

/s/ Robert V. Denney
United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER,

Plaintiff,

and

WILLIAM GEORGE FOOTE, WILLIAM McKINLEY HINES, and LARRY D. JONES,

Plaintiffs-Intervenors,

vs.

JOSEPH VITEK, individually and as Director of the Department of Corrections; ROBERT PARRATT, in-

dividually and as Warden of the Nebraska Penal Complex; JACK CLEAVINGER, individually and as Director of the Department of Public Institutions; KLAUS HARTMAN, M. D., individually and as Superintendent of the Lincoln Regional Center; BENJAMIN COATES, individually and as head of the Security Building, Lincoln Regional Center,

Defendants.

(Filed September 12, 1977)

MEMORANDUM OF DECISION

Dept. of Justice, September 13, 1977, State of Nebraska

APPEARANCES: For plaintiff and plaintiffs-intervenors, Thomas A. Wurtz

For defendants,

Mel Kammerlohr, Assistant Attorney General

Four[1] men who have been transferred involuntarily from the Nebraska Penal and Correctional Complex to the Security Unit of the Lincoln Regional Center because of claimed mental disease or defect challenge the constitutionality of the state statute under which they were transferred.

The action is brought pursuant to 42 U. S. C. § 1983 and jurisdiction is granted by 28 U. S. C. §§ 1343 (3) and (4), as well as 28 U. S. C. §§ 2201 and 2202, which authorize declaratory and injunctive relief.

Under attack is § 83-180, R. R. S. Neb. 1943[2], which provides:

> ". . . [W]hen a physician or psychologist designated by the [Director of Correctional Services] finds that a person committed to the [Department of Correctional Services] suffers from a mental disease or defect, the chief executive officer may order such person to be segregated from other persons in the facility.

> If the physician or psychologist is of the opinion that the person cannot be given proper treatment in that facility, the director may arrange for his transfer for examination, study, and treatment to any medical-correctional facility, or to another institution in the Department of Public Institutions where proper treatment is available. A person who is so transferred shall remain subject to the jurisdiction and custody of the Department of Correctional Services and shall be returned to the Department when, prior to the expiration of his sentence, treatment in such facility is no longer necessary."

Much of the evidence was stipulated or otherwise uncontested. Each of the plaintiffs was separately convicted for violations of Nebraska criminal law and sentenced to the Department of Correctional Services to a term of years. Each plaintiff began serving his term in the Nebraska Penal and Correctional Complex, which is within the Department of Correctional Services, but was involuntarily[3] transferred to the Lincoln Regional Center, which is not within the Department of Correctional Services but is within the Department of Public Institutions. Each was transferred without any formal notice or hearing or any safeguard other than determinations by one or more psychiatrists that the prisoner suffered from a mental disease or defect and that he could not be given proper treatment in the Nebraska Penal and Correctional Complex.

Inmates at the Penal Complex are provided access to certain psychiatric care and treatment, but the institution does not have a staff and facilities necessary to provide for all mental health needs which may arise. It does have a psychiatric care unit, which can be used as living quarters for inmates whose conditions require that they

be separated from the general population, and a hospital, where more closely guarded and segregated conditions may be imposed. Inmates within the psychiatric care unit or the prison hospital are subjected to a schedule more restrictive than that of the general prison population, but are not required to undergo psychiatric treatment involuntarily.

The Security Unit of the Lincoln Regional Center is a hospital, owned and operated by the State of Nebraska for the purpose of treatment of emotional and mental disorders. Patients there, including inmates transferred from the Penal Complex, are frequently required to participate in behavior modification programs and to take whatever medication may be prescribed for them. Confinement conditions are substantially more restrictive than those at the Penal Complex in that the patients have less freedom of movement, are under constant supervision, have substantially fewer recreational and vocational opportunities, are unable to earn money, and must spend most of their time in their wards. When the Lincoln Regional Center determines that an inmate no longer needs to remain at the Lincoln Regional Center, arrangements are made to return the prisoner to the Penal Complex.

I.

The Fourteenth Amendment to the Constitution of the United States forbids any State to "deprive any person of . . . liberty . . . without due process of law." When a person already has lost much of his liberty because he is imprisoned, not every change of status while he is imprisoned amounts to a loss of "liberty" within the meaning of the Constitution. The opinions in *Meachum v.*

Fano, 427 U. S. 215 (1976), and *Montayne v. Haymes,* 427 U. S. 236 (1976), are to the effect that it is not merely the gravity of the disadvantage imposed upon the prisoner by changes of location that determines whether the liberty interest is entitled to the protection of due process. The court in *Montayne* said at page 242:

> "We held in *Meachum v. Fano* that no Due Process Clause liberty interest of a duly convicted prison inmate is infringed when he is transferred from one prison to another within the State, whether with or without a hearing, absent some right or justifiable expectation rooted in state law that he will not be transferred except for misbehavior or upon the occurrence of other specified events."

The plaintiffs here were not transferred from one "prison" to another but from a prison to a state mental hospital for both a continuation of their prison terms and for mental treatment. The prison and the hospital properly may be equated for due process purposes.[4] The evidence shows that transfers to the Lincoln Regional Center are conditioned upon a finding that the prisoner suffers from a mental disease or defect and cannot be adequately treated within the Penal Complex. The statute under which the plaintiffs' transfers were made specifically so states. Furthermore, the evidence shows that transfers to the Lincoln Regional Center are so conditioned in practice. Inmates are not assigned to the Lincoln Regional Center for any administrative or correctional purposes. Therefore, there was an objective expectation, firmly fixed in state law and official Penal Complex practice, that a transfer would not occur except when the inmate suffers from a mental disease or defect and that it cannot be adequately treated at the Penal Complex. This case, there-

fore, comes within the exception noted in *Meachum.* Furthermore, the fact of greater limitations on freedom of action at the Lincoln Regional Center, the fact that a transfer to the Lincoln Regional Center has some stigmatizing consequences, and the fact that additional mandatory behavior modification systems are used at the Lincoln Regional Center combine to make the transfer a "major change in the conditions of confinement"[5] amounting to a "grievous loss"[6] to the inmate. We therefore hold that due process attached to the plaintiffs' liberty interest, and the task of the court is to determine what process is due and whether the procedures provided to these plaintiffs were adequate. See *Morrissey v. Brewer,* 408 U. S. 471, 484 (1972).

II.

Because due process is a flexible concept to be fitted to each setting, some analytical framework is helpful in deciding the specific steps that fit a specific setting. *Mathews v. Eldridge,* 424 U. S. 319, 334-355 (1976), suggests

> ". . . [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. See, *e. g., Goldberg v. Kelly, supra,* at 263-271."

As to the first factor, the private interest in this case is the plaintiffs' interest in avoiding the entry of a more

controlled confinement and being labeled mentally ill. Because the plaintiffs have already been deprived of much of their freedom of choice, this private interest is not identical to the interest of nonprisoners who are being considered for civil commitment, as in *Doremus v. Farrell,* 407 F. Supp. 509 (U. S. D. C. Neb. 1975). Entry into a mental hospital still carries some distinctive stigma, which in the specific setting of this case is accompanied by techniques of behavior modification[7] not used at the Penal Complex, so the interest of the plaintiffs is not the same[8] as that of other prisoners who are being considered for transfer from one prison to another, as in *Meachum,* supra, and *Montayne,* supra, or that of other prisoners who are being taken through prison disciplinary proceedings, as in *Wolff v. McDonnell,* 418 U. S. 539 (1974).

Second, the risk of an erroneous deprivation of these private interests is relatively high where the only safeguard used is the opinion of one physician or psychologist without opportunity for anyone—the prisoner or anyone on his behalf—to question that opinion. This is especially true because the inmate may be mentally unable to understand or to challenge the conclusions. Other procedural safeguards, such as written prior notice, a hearing, written findings, and someone to speak for the one claimed to be mentally ill, have self-evident value in reducing the risk.

Third, the state's interest in placing a mentally ill person into the institution best equipped to treat him is strong and deserves primacy. Swiftness does not appear to be a major need, in view of the availability at the Penal Complex of physical security, some psychiatric and

psychological staff, and a hospital. Hazards of calling witnesses at a hearing, either within or outside the Penal Complex, whether those witnesses are prisoners or nonprisoners, are certainly less when the issue is whether the inmate is mentally ill than when the issue is whether the inmate has committed some infraction for which he should be disciplined.[9] Usually, the witnesses in a mental hearing will be nonprisoners.

In *Morrissey v. Brewer,* 408 U. S. 471 (1972), the court listed six procedural safeguards as minimal requirements of due process where the issue was what process is due a parolee on revocation of his conditional liberty:

1. Written notice of the claimed violations of parole;
2. Disclosure at a hearing of the evidence in support of the state's claim;
3. An opportunity to be heard in person and to present witnesses and documentary evidence;
4. The right to confront and cross-examine witnesses (unless the hearing officer specifically found good cause for not allowing confrontation);
5. A hearing before a neutral and detached hearing body, members of which do not need to be judicial officers; and
6. A written statement by the decisionmaker as to the evidence relied upon and the reasons for any adverse decision.

Each of these, and others, will be discussed in terms of a proceeding to determine whether a prisoner should be transferred to a mental hospital.

Formal notice that transfer to a mental hospital is being considered, disclosure to the prisoner of the evidence being relied upon for the transfer, and an opportunity to be heard in person and to present documentary evidence are so fundamental that little discussion of them is needed. See *In re Gault,* 387 U. S. 1 (1967). We perceive no consideration that militates against requiring those basic and vital procedures.

Calling of witnesses by the defense and confronting of all witnesses called by the state stand on a somewhat different footing. It cannot be denied that friction between prisoners arising in or because of a hearing at which prisoners testify against prisoners is a relevant factor, at least when the hearing is within the prison, but the nature of the inquiry in a mental hearing holds a sufficiently low possibility of friction that it appears to us there is a right to call witnesses and to confront and cross-examine witnesses, except upon a finding, not arbitrarily made, of good cause for not permitting each as to a particular witness.

A neutral and detached hearing body is essential. While a judicial officer is not required, and the decisionmaker need not be from outside the prison or hospital administration,[10] at least the examining or treating physician or psychologist should not be permitted to vote on the commitment decision.[11] A written statement by the factfinding body as to the evidence relied upon and the reasons for transferring the inmate should be made. We see no relevant factors different from those noted by the court in *Wolff v. McDonnell,* 418 U. S. at 565.

The availability of counsel is as critical to a prisoner who may be mentally ill as it is to a nonprisoner in the same condition. The capability to examine, understand, evaluate and challenge the process and the evidence is vital and there may be nobody available to do so, unless it be by counsel, furnished by the state, if need be, because of indigency. The state's interest in avoiding hearings having an adversary cast which may tend to obstruct achievement of correctional goals, recognized in *Wolff v. McDonnell,* 418 U. S. at 569-570, are overshadowed by the disability which accompanies one who is mentally ill.

It should be apparent that the prisoner's rights are largely illusionary unless he knows those rights. The procedure, therefore, should assure notice of them to him.

Accordingly, § 83-180 (1), R. R. S. Neb. 1943, is unconstitutional as applied to the plaintiffs, because none of the foregoing rights was afforded the plaintiffs.

To recapitulate, the minimal requirements of due process when a person is transferred from the Nebraska Penal and Correctional Complex to the Lincoln Regional Center are these:

A. Written notice to the prisoner that a transfer to a mental hospital is being considered;

B. A hearing, sufficiently after the notice to permit the prisoner to prepare, at which disclosure to the prisoner is made of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

C. An opportunity at the hearing to present testimony of witnesses by the defense and to confront and cross-examine witnesses called by the state, except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination;

D. An independent decisionmaker;

E. A written statement by the factfinder as to the evidence relied on and the reasons for transferring the inmate;

F. Availability of legal counsel, furnished by the state, if the inmate is financially unable to furnish his own; and

G. Effective and timely notice of all the foregoing rights.

This opinion does not seek to determine whether there are other procedures that would be useful or the best way to implement the constitutional demands. Those are matters for the legislative process and not for the courts.

III.

Persuaded as we are that § 83-180 (1) is unconstitutional as applied to these plaintiffs because of due process infirmities, we resolve the action on that basis. A prime obstacle to resolving the case on equal protection grounds, as was done in *Baxtrom v. Herold,* 383 U. S. 107 (1966), is that an equal protection analysis requires a comparison of the § 83-180 (1) procedure with a more favorable procedure afforded persons not in the class described in § 83-180 (1). At the time the plaintiffs were transferred to the Lincoln Regional Center, the procedure used for committing nonprisoners to mental hospitals was constitutionally defective. It was so declared in *Doremus v. Farrell,* supra, as failing to provide due process. That procedure, therefore, is a poor standard

for comparison purposes. The present procedure for civil commitments, found in § 83-1001, et seq., became effective on April 6, 1976, which was after the plaintiffs were transferred to the Lincoln Regional Center. We do not mean to say that an equal protection analysis could not be made; we mean only that hurdles exist which need not be cleared. Even under an equal protection analysis, the ultimate question of the propriety of differentiating procedures for prisoners and nonprisoners probably depends upon a weighing of the factors discussed in this opinion regarding due process. Whether the Nebraska legislature ultimately decides to use a procedure for transferring prisoners to a mental hospital that differs from that for committing nonprisoners must be left to the good judgment of the legislature, limited only by constitutional strictures.

IV.

The precise relief to be ordered for the individual plaintiffs should be fashioned after suggestions from counsel. The order which is filed at the time of this memorandum will require the making of specific proposals.

The foregoing memorandum of decision constitutes the findings of fact and conclusions of law required by Rule 52 of the Federal Rules of Civil Procedure.

Dated

BY THE COURT:

/s/ Donald P. Lay
United States Circuit Judge

/s/ Warren K. Urbom
Chief United States District Judge

/s/ Robert V. Denney
United States District Judge

Footnote 1. On August 18, 1976, this action was certified as a class action by Charles Miller on behalf of all persons presently confined in the Lincoln Regional Center, Security Building, who have been transferred there from the Nebraska Penal and Correctional Complex pursuant to §§ 83-179 and 180, and all persons presently confined to the Nebraska Penal and Correctional Complex. Following a hearing, however, the action was decertified. William McKinley Hines, William George Foote, and Larry D. Jones were added as individual plaintiffs-intervenors thereafter on their motions. Hines was returned to the Nebraska Penal and Correctional Complex and has been released on parole. No evidence has been offered to support his claim and the action evidently is no longer being pursued by him, so his claim will be dismissed. Foote and Miller have been returned to the Nebraska Penal and Correctional Complex, but remain subject to the procedures in § 83-180.

Footnote 2. Mentioned also in the complaint is a challenge to § 83-179, which provides for an evaluation of persons upon initial admission to a state institution, but this statute was not responsible for the transfer of any of the plaintiffs to the Lincoln Regional Center and it need not be dealt with separately in this case.

Footnote 3. The involuntariness of the transfer of Larry D. Jones is not crystal clear from the evidence, because he was asked by the examining psychiatrist before his transfer whether he wanted to be transferred and he said that he did, but was offered no procedure by which he could receive independent advice on the subject and he may well not have been competent to exercise a free choice.

Footnote 4. Section 83-176, R. R. S. Neb., declares that whenever any person is sentenced or committed under any provision of law to a specific facility within the Department of Correctional Services, "he shall be deemed to be sentenced or committed to the Department." The Director of Correctional Services, according to the statute, is authorized to designate as the place of confinement of any person committed to the department "any available, suitable or appropriate residence facility or institution, whether or not operated by the state, and may transfer such person from one place of confinement to another," with some declared restrictions as to minors.

Footnote 5. See *Wolff v. McDonnell,* 418 U. S. 539, 571-572, n. 19 (1974).

Footnote 6. *Morrissey v. Brewer,* 408 U. S. 471, 482 (1972).

Footnote 7. The evidence before us would not support a statement like that made in *United States ex rel. Schuster v. Herold,* 410 F. 2d 1071, 1078 (C. A. 2nd Cir. 1969):

> ". . . Yet he [the transferred prisoner] will be confined with men who are not only mad but dangerously so. . . . [H]e will be exposed to physical, emotional and general mental agony. Confined with those who are insane, told repeatedly that he too is insane and indeed treated as insane, it does not take much for a man to question is own sanity and in the end to succumb to some mental aberration."

Footnote 8. These techniques were only generally described at the trial, but appear to include medication.

Footnote 9. For a discussion of the hazards related to disciplinary hearings, see *Wolff v. McDonnell,* 418 U. S. at 566-569.

Footnote 10. See *Withrow v. Larkin,* 421 U. S. 35 (1975); *Hortonville Joint School District v. Hortonville Education Association,* 426 U. S. 482 (1976); *Wolff v. McDonnell,* 418 U. S. at 570-571 (1974).

Footnote 11. See *Doremus v. Farrell,* 407 F. Supp. 509, 517 (U. S. D. C. Neb. 1975), and cases cited there.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER,

Plaintiff,

and

WILLIAM GEORGE FOOTE,
WILLIAM McKINLEY HINES,
and LARRY D. JONES,

Plaintiffs-Intervenors,

vs.

JOSEPH VITEK, et al.,

Defendants.

ORDER

(Filed September 12, 1977)

Pursuant to the accompanying memorandum of decision,

IT HEREBY IS ORDERED:

1. That William McKinley Hines is dismissed as a plaintiff-intervenor; and

2. That counsel shall submit to the court within fifteen days of the date of this order specific proposals for the relief to be granted to the plaintiffs, consistent with such memorandum of decision.

Dated September 12, 1977.

BY THE COURT

/s/ Donald P. Lay
United States Circuit Judge

/s/ Warren K. Urbom
Chief United States District Judge

/s/ Robert V. Denney
United States District Judge

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER, etc.,

Plaintiff,

vs.

JOSEPH VITEK, individually and as Director of the Department of Corrections; ROBERT PARRATT, individually and as Warden of the Nebraska Penal Complex; JACK CLEAVINGER, individually and as Director of the Department of Public Institutions; KLAUS HARTMANN, M. D., individually and as Superintendent of the Lincoln Regional Center; BENJAMIN COATES, individually and as head of the Security Building, Lincoln Regional Center,

Defendants.

JUDGMENT

(filed October 27, 1978)

Pursuant to the memorandum of decision of September 12, 1977, filing 57, and the memorandum of decision regarding mootness of today,

IT IS ADJUDGED AND DECREED:

1. That § 83-180(1), Nebraska R. R. S. 1943, is declared to be unconstitutional as applied to the plaintiffs in that it denied the plaintiffs due process of law;

2. That this lawsuit is moot as to the plaintiff Charles Miller and as to the plaintiff-intervenor William George Foote and the action is therefore dismissed as to them; and

3. That the defendants are enjoined from transferring the plaintiff-intervenor Larry D. Jones, at any time before his complete discharge from the custody of the State of Nebraska on the criminal sentence which he is now serving, to the Lincoln Regional Center, except by a procedure which includes each of the following:

A. Written notice to the prisoner that a transfer to a mental hospital is being considered;

B. A hearing, sufficiently after the notice to permit the prisoner to prepare, at which disclosure to the prisoner is made of the evidence being relied upon for the transfer and at which an opportunity to be heard in person and to present documentary evidence is given;

C. An opportunity at the hearing to present testimony of witnesses by the defense and to confront and cross-examine witnesses called by the state, except upon a finding, not arbitrarily made, of good cause for not permitting such presentation, confrontation, or cross-examination;

D. An independent decisionmaker;

E. A written statement by the factfinder as to the evidence relied on and the reasons for transferring the inmate;

F. Availability of legal counsel, furnished by the state, if the inmate is financially unable to furnish his own; and

G. Effective and timely notice of all the foregoing rights.

Dated October 25th, 1978.

BY THE COURT:

/s/ Donald P. Lay
United States Circuit Judge

/s/ Warren K. Urbom
Chief United States District Judge

/s/ Robert V. Denney
United States District Judge

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER, etc.,
Plaintiff,

vs.

JOSEPH VITEK, et al.,
Defendants.

MEMORANDUM OF DECISION
REGARDING MOOTNESS

(Filed October 27, 1978)

This case is now before the court on remand from the Supreme Court of the United States for consideration of the question of mootness. The issue presented is whether the fact that the plaintiff-intervenor, Larry D. Jones, is now on parole, but subject to and under the threat of transfer to the state mental hospital for examination,

study and treatment, moots his claim of the unconstitutionality of § 83-180 R. R. S. Neb. 1943 (Reissue 1976). The statute in question authorizes the transfer of a state prisoner, without his consent, to a state mental hospital when a physician or psychologist finds that the prisoner suffers from a mental disease or defect which may not properly be treated within the facility in which he is confined.

Larry D. Jones was convicted of robbery and was sentenced to a prison term in the Nebraska Penal and Correctional Complex. After serving part of his sentence in the Penal Complex from May, 1974, to January, 1975, Jones was transferred to the penitentiary hospital. Two days later he was placed in solitary confinement in the adjustment center of the Penal Complex, where he set his mattress on fire, thereby burning himself. Jones then was sent to the burn unit of a private hospital. Upon his release from that hospital, he was transferred to the security unit of the Lincoln Regional Center, pursuant to § 83-180.

In April, 1976, Jones sought to intervene in this civil rights action, which was brought by another prisoner who had been transferred from the Penal Complex to the Lincoln Regional Center, contesting the constitutionality of § 83-180. This court on October 14, 1977, declared § 83-180 (1) unconstitutional as applied and enjoined the transfer of Jones from the penal facility to the Lincoln Regional Center unless certain due process requirements were met. *Miller v. Vitek,* 437 F. Supp. 569 (U. S. D. C. Neb. 1977).

On appeal, the Supreme Court of the United States noted that Jones had been granted parole for the purpose

of allowing him to receive inpatient psychiatric care at the Veterans Hospital in Danville, Illinois, vacated the judgment, and remanded the case for consideration of the question of mootness. *Vitek v. Miller,* — U. S. —, 98 S. Ct. 2276 (1978).

Since the remand, according to the defendants' counsel, Jones has been granted "a very limited parole 'to obtain inpatient psychiatric services,'" and "is presently under investigation for violation of even this limited assignment." Defendants' brief on the question of mootness, p. 5. It is stated that Jones' tentative discharge date is March 28, 1982. While on parole, Jones may be required by the parole board to "[s]ubmit himself to available medical, psychological, psychiatric or other treatment." § 83-1,116 R. R. S. Neb. 1943 (Reissue 1976). Although the parole board has legal custody of an inmate on parole, the Director of Correctional Services establishes the policies for the parole board and his department supervises persons on parole. § 83-173 R. R. S. Neb. 1943 (Reissue 1976).

Until Jones' release "[t]he defendants claim not only the right to transfer the plaintiff-intervenor for examination, study and treatment at the Lincoln Regional Center in accordance with § 83-180, . . . but also they consider the statutory procedure the better and intend to follow it . . ." Defendants' brief on the question of mootness, p. 6.

The defendants view the due process requirements mandated by this court for the transfer of a prisoner to a state mental institution pursuant to § 83-180 as "an existing and immediate restraint upon the full and com-

plete exercise of the rights and duties of the prison authorities and the State of Nebraska as conferred and assigned to them by the legislative arm of the state." *Id.,* at p. 8.

In *DeFunis v. Odegaard,* 416 U. S. 312 (1974), the Supreme Court of the United States declared the issue of discrimination in the admissions process of a law school moot after the plaintiff himself had been admitted to the law school and the school's policy was to allow him to finish his legal education. The court stated:

> "There is a line of decisions in this Court standing for the proposition that the 'voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot.' . . . These decisions and the doctrine they reflect would be quite relevant if the question of mootness here had arisen by reason of a unilateral change in the *admissions procedures* (emphasis the court's) of the Law School. For it was the admissions procedures that were the target of this litigation, and a voluntary cessation of the admissions practices complained of could make this case moot only if it could be said with assurance 'that "there is no reasonable expectation that the wrong will be repeated."' United States v. W. T. Grant Co. [345 U. S.] at 633, 97 L. Ed. 1303. Otherwise, '[t]he defendant is free to return to his old ways,' id., at 632, 97 L. Ed. 1303, and this fact would be enough to prevent mootness because of the 'public interest in having the legality of the practices settled.' Ibid. But *mootness in the present case depends* not at all upon a 'voluntary cessation' of the admissions practices that were the subject of this litigation. It depends, instead, *upon the simple fact that DeFunis is now in the final quarter of the final year of his course of study, and the settled and unchallenged policy of*

the Law School to permit him to complete the term for which he is now enrolled." (Emphasis added.)
416 U. S. at 318.

The Supreme Court found DeFunis' claim moot because (1) DeFunis was currently unaffected by the allegedly unconstitutional admissions practices—he had been admitted to the law school; and (2) DeFunis would not be affected in the future—the law school had agreed to allow him to complete his legal education.

Unlike the claim in *DeFunis,* the plaintiff-intervenor's claim in the case here is not moot. Although Jones is not currently being held in the state mental hospital pursuant to § 83-180, he is subject to and is in fact under threat of being transferred to the state mental hospital under § 83-180. In their brief to this court the defendants declared at page 9:

> "The defendants consider, because plaintiff-intervenor Jones' history of mental illness indicates a serious threat to his own safety, as well as to that of others, and the number of years he has left to serve before he is entitled to complete discharge, that there is a very real expectation that the situation which the three-judge court termed 'wrong' will recur; therefore the need for both the defendants and plaintiff-intervenor to have a determination of the legal procedure continues to exist. . . . "

Larry D. Jones is in the custody of the state and is subject to § 83-180. He has been a mental patient and may well be required to submit to further medical examination and treatment. His anticipated date of release is March 1982. The state and the plaintiff-intervenor both thus have current and adverse interests with respect to the procedures required by the due process clause, if

any, before a prisoner is transferred pursuant to § 83-180. See *DeFunis v. Odegaard,* supra, at 319-320.

Dated October 25th, 1978.

BY THE COURT:

/s/ Donald P. Lay
United States Circuit Judge

/s/ Warren K. Urbom
Chief United States District Judge

/s/ Robert V. Denney
United States District Judge

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CV75-L-172

CHARLES MILLER,

Plaintiff,

and

WILLIAM GEORGE FOOTE and
LARRY D. JONES,

Plaintiffs-Intervenors,

vs.

JOSEPH VITEK, individually and as Director of the Department of Corrections; ROBERT PARRATT, individually and as Warden of the Nebraska Penal Complex; JACK CLEAVENGER, individually and as Director of the Department of Public Institutions; KLAUS HARTMANN, M. D., individually and as Superintendent of the

Lincoln Regional Center; BENJAMIN COATES, individually and as head of the Security Building, Lincoln Regional Center,

Defendants.

NOTICE OF APPEAL

(Filed Nov. 21, 1978)

Notice of appeal to the United States Supreme Court is hereby given by the defendants listed from the Judgment entered herein on or about October 25, 1978, except paragraph 2 thereof.

This appeal is taken pursuant to 28 U. S. C. § 1253, 28 U. S. C. § 2281, and 28 U. S. C. § 2282 from the judgment of a three-judge court declaring Nebraska statute sec. 83-180(1), Nebr. R. R. S. 1943 unconstitutional and enjoining state officers from enforcing the provisions of a Nebraska state statute because of its unconstitutionality, which action was commenced on or about the 12th day of November, 1975.

Respectfully submitted,

JOSEPH VITEK, et al.,
Defendants

By PAUL L. DOUGLAS
Attorney General of Nebraska

By /s/ Melvin Kent Kammerlohr
Melvin Kent Kammerlohr
Assistant Attorney General

2115 State Capitol
Lincoln, Nebraska 68509
Tel: (402) 471-2682

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been served upon the opposing counsel of record, Mr. Thomas A. Wurtz, the only party required to be served in this action, by mailing said copy, first class postage prepaid, addressed to Mr. Thomas A. Wurtz, University of Nebraska College of Law, Lincoln, Nebraska 68583.

Dated this 21st day of October, 1977

/s/Melvin Kent Kammerlohr
Member of the Bar of the Supreme
Court of the United States

EXHIBIT G

83-173. Director of Correctional Services; duties. The Director of Correctional Services shall:

(1) Supervise and be responsible for the administration of the Department of Correctional Services;

(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction and rehabilitation of persons committed to the department;

(4) Appoint and remove the chief executive officer of each facility and delegate appropriate powers and duties to him;

(5) Appoint and remove employees of the department and delegate appropriate powers and duties to them;

(6) Make rules and regulations for the management, correctional treatment and rehabilitation of persons committed to the department, the administration of facilities, and the conduct of officers and employees under his jurisdiction;

(7) Designate the place of confinement of persons committed to the department subject to the provisions of section 83-176;

(8) Collect, develop and maintain statistical information concerning persons committed to the department, sentencing practices and correctional treatment as may be useful in penological research or in the development of treatment programs;

(9) Provide training programs designed to equip employees for duty in the facilities and related services of the department and to raise and maintain the educational standards and the level of performance of such employees;

(10) Transmit annually to the Governor and the Director of Public Institutions a report of the operations of the department for the preceding calendar year, which report shall be transmitted by the Governor to the Legislature; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his responsibilities.

83-176. Director of Correctional Services; designate place of confinement; minor serious threat to safety; how determined. (1) Whenever any person is sentenced or

committed under any provision of law to a specific facility within the Department of Correctional Services or to the custody of the warden or superintendent of such facility, he shall be deemed to be sentenced or committed to the department.

(2) The Director of Correctional Services may designate as a place of confinement of a person committed to the department any available, suitable and appropriate residence facility or institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another subject to the following:

(a) A minor declared neglected, dependent, or in need of special supervision pursuant to the provisions of Chapter 43, article 2, shall not be assigned or transferred to the Nebraska Penal and Correctional Complex, the Nebraska Center for Women, or any other facility designated primarily for the imprisonment of adult offenders.

(b) A minor declared delinquent pursuant to the provisions of Chapter 43, article 2, shall not be assigned or transferred to the Nebraska Penal and Correctional Complex, the Nebraska Center for Women or any other facility designed primarily for the imprisonment of adult offenders, unless he is sixteen years of age, or older, and he is a serious threat to the safety of persons in other facilities. The determination as to whether the minor is a serious threat to safety shall be made only after juvenile court hearing in the court of original disposition, at which the minor shall have the right to be represented by counsel.

83-179. Person committed; physical examination; evaluation; contents; recommendations. Upon his initial

admission to a facility, each person committed to the department shall be given a physical examination and a thorough evaluation He shall be kept apart from other persons committed to the department until he is known to be free from any communicable disease. The evaluation shall include such person's psychological, social, educational and vocational condition and history, and the motivation of his offense. A report shall be submitted on each such person to the chief executive officer of the facility containing the findings of the physical examination and evaluation. The report shall include recommendations regarding the facility to which such person should be assigned, the degree and kind of custodial control, and the program of treatment for his rehabilitation, including medical and psychological treatment and educational and vocational training.

EXHIBIT H

STATE OF NEBRASKA

Board of Parole

CHARLES THONE
Governor

John B. Greenholtz, Chairman
Eugene E. Neal, Member
Robert J. Keller, Member
Edward M. Rowley, Member
Doris D. Collins, Member

State Capitol
P. O. Box 94754
Lincoln, Nebraska 68509

Dept. of Justice
JAN 9, 1979
State of Nebraska

January 8, 1979

TO WHOM IT MAY CONCERN:

I, Rose Marie Johnston, as Administrative Assistant to the Nebraska Board of Parole and in charge of office records, do hereby certify that the attached copy of order revoking parole is a true and exact copy of said document as taken from the file of Larry Jones, Nebraska Penal and Correctional Complex Number 29327, on file in the office of the Board of Parole.

Dated this 8th day of January, 1979.

NEBRASKA BOARD OF PAROLE

/s/ Rose Marie Johnston
Administrative Assistant

Subscribed and sworn to before me this 8th day of January, 1979.

/s/ Nikki B. Wright
Notary Public

SEAL

STATE OF NEBRASKA
BOARD OF PAROLE

ORDER REVOKING PAROLE

Know All Men By These Present:

That Larry Jones No. 29327 was on the 31st day of May, 1974 convicted in the District Court of Douglas County, Nebraska, of the crime of Robbery and was sentenced to the Nebraska Penal & Correctional Complex at Lincoln, Nebraska on the 31st day of May, 1974, and

That in accordance with the Laws of the State of Nebraska and the rules of the Board of Parole, said Larry Jones No. 29327 was, on the 17th day of November, 1977 paroled by said Board of Parole, to go outside of the buildings and enclosure of said Nebraska Penal & Correctional Complex, but not outside of the State of Nebraska without special permission, subject, however to the conditions stipulated in a certain parole agreement executed in triplicate and signed by said parolee, and

WHEREAS, it has come to the knowledge of the Board of Parole that the said Larry Jones has violated the conditions of said parole agreement and has therefore forfeited his right to remain longer on parole, now

THEREFORE, it is hereby ordered that the said Larry Jones No. 29327 be apprehended and returned to the said Nebraska Penal & Correctional Complex to be there further dealt with under the provisions of the original sentence as the law in such cases provides. Delinquency date is hereby fixed as October 4, 1978.

It is further ordered that any law enforcement officer in the State of Nebraska be and he is hereby author-

ized and directed to arrest said Larry Jones whenever and wherever found, and hold him for return to the said institution.

Dated at Lincoln, Nebraska, this 8th day of January, 1979.

STATE OF NEBRASKA—BOARD OF PAROLE

/s/ John B. Greenholtz
Chairman

/s/ Eugene E. Neal
Member

/s/ Edward M. Rowley
Member